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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO HOMELESS UNION, a
local of the CALIFORNIA HOMELESS
UNION/STATEWIDE ORGANIZING
COUNCIL, on behalf of itself and those it
represents; BETTY RIOS; DONTA
WILLIAMS; FALISHA SCOTT and all
those similarly situated,

Plaintiffs,

vs.

COUNTY OF SACRAMENTO, a political
subdivision of the State of California; CITY
OF SACRAMENTO, a municipal
corporation; and DOES 1 – 100,

Defendants.

Case No.: 2:22-cv-01095-TLN-KJN

DEFENDANT CITY OF
SACRAMENTO'S REPLY IN
SUPPORT OF MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS

1 I. ARGUMENT

2 In opposition to defendant CITY OF SACRAMENTO's (the "City") motion for partial
3 judgment on the pleadings, plaintiffs SACRAMENTO HOMELESS UNION, BETTY RIOS,
4 DONTA WILLIAMS, and FALISHA SCOTT provide no law or argument sufficient to
5 withstand dismissal.

6 Plaintiffs do not counter let alone mention – and therefore concede – the City's assertion
7 that plaintiffs cannot plead a violation of Health and Safety Code section 101025. This claim
8 (fourth) can thus be easily dismissed.

9 Plaintiffs' opposition focuses instead on their second and third claims for violations of
10 article I, sections 7 and 1 of the California Constitution, respectively. Again, plaintiffs concede
11 – this time affirmatively – that they are unable to cite law establishing the facial validity of these
12 claims. (Opposition at 2:5-7.) This concession alone warrants dismissal, as well.

13 In a desperate attempt to salvage these claims, plaintiffs ask this Court to create new, *state*
14 law. (Opposition at 2:5-7.) In support, plaintiffs cite *Blake v. El-Tawansy*, 2022 WL 3692647
15 (N.D. Cal. Aug. 25, 2022) for the proposition that the California Constitution confers a private
16 right of action for state-created danger. However, *Blake* merely mentioned in dicta that the
17 California Constitution, just like the Fourteenth Amendment to the U.S. Constitution, contains
18 a due process clause. *Id.* at *2. Nothing more.

19 In the same argument, plaintiffs also cite *Katzberg v. Regents of University of California*, 29
20 Cal.4th 300 (2002), arguing, "*Katzberg*, itself, makes it clear that while the similarity may not
21 extend to a suit for damages, it is a very different story when it comes to the California
22 Constitution as the basis for *injunctive* relief." (Opposition at 3:2-4.) *Katzberg* holds no such
23 thing; nor is this proposition even in dicta. *See generally, Katzberg, supra*, 29 Cal.4th.

24 Plaintiffs finally argue that it is the City's burden to prove California law does not recognize
25 a state-created danger claim. This assertion is so fundamentally incorrect¹ that the City is

26
27 ¹ Plaintiffs' opposition contains other surprising statements. For instance, it opens with the
28 assertion that this Court found, "the City of Sacramento's affirmative conduct ... constituted a
state-created danger." (Opposition at 1:21-26.) (emphasis added). This Court did not so rule.
Rather, it found there is a likelihood of success on the merits as to that claim. (ECF No. 22 at
5:20-23, 20:18 fn. 9.) (emphasis added). It is a subtle, but major, distinction.

1 unsure how to address it other than by stating that it is plaintiffs – not defendants – who bear
2 the burden of alleging facially plausible claims. Fed. R. Civ. P. 8(a); *Shroyer v. New Cingular*
3 *Wireless Services, Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).

4 Plaintiffs provide no law or even persuasive argument to survive dismissal. Rather,
5 plaintiffs' position appears to be that this case presents an opportunity for this Court to create
6 new state law by extending the California Constitution to new lengths. (Opposition at 4:22-
7 25.) ["While this case may be one of first impression in applying the State Created Danger
8 Doctrine to Article I § I [sic] and § 7, the California Supreme Court has laid out a road map for
9 this court to apply these constitutional provisions to new situations like this one."].

10 However, as the Northern District stated in *Shen*, "[I]t is emphatically not the role of this
11 federal court to create new doctrines under the California state constitution." *Shen v. Albany*
12 *Unified School District*, 436 F.Supp.3d 1305, 1315 (N.D. Cal. Jan. 29, 2020). The inquiry should
13 thus end there.

14 Accordingly, the City respectfully requests this Court enter judgment for the City as to
15 plaintiffs' second, third, and fourth claims while the parties await the Ninth Circuit's ruling on
16 plaintiffs' first claim.

17 DATED: November 16, 2023

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20 By: /s/ GÖKALP Y. GÜRER

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